

ORIGINAL**BEFORE THE****FEDERAL COMMUNICATIONS COMMISSION**

Washington, DC 20554

In the Matter of

Amendment of Section 73.202(b)
 Table of Allotments
 FM Broadcast Stations
 (Rosendale, New York)

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MM Docket No. 93-17
 RM-8170

To: Chief, Allocations Branch
 Policy and Rules Division
 Mass Media Bureau

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SEP 15 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**OPPOSITION TO PETITION FOR RECONSIDERATION**

Sacred Heart University, Inc. ("SHU"), by its counsel, hereby submits its Opposition to the "Petition for Reconsideration" filed by State University of New York ("SUNY") on August 1, 1997¹. SUNY's Petition for Reconsideration is procedurally defective and, at best, entitled to consideration in a separate rule making proceeding MM Docket No. 97-178 (West Hurley and Rosendale, New York, North Canaan and Sharon, Connecticut) to which it is mutually exclusive. In support hereof, SHU states as follows:

1. Although SUNY has had numerous opportunities to request and demonstrate that either Channel 273A or Channel 255A should be reserved for noncommercial educational use so that its license could be modified in MM Docket No. 93-17 it has waited until its administrative remedies were exhausted to file what amounts to a new proposal. SUNY now states that SUNY desires to have its license modified to Channel 273A as a reserved non-commercial educational

¹ This Opposition is timely filed pursuant to the publication of the filing of SUNY's Petition for Reconsideration in the Federal Register on August 29, 1997, 62 FR 45813, which set an opposition deadline of September 15, 1997. See Exhibit 1.

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allotment, to allot Channel 255A at Rosendale and have all pending applicants modify their applications to the new channel at new transmitter locations in some cases. SUNY has not unequivocally articulated this position previously.

2. SUNY seeks to have the Mass Media Bureau reconsider the action taken by the Commission on the basis that the Commission itself failed to address a factual matter. However, Section 1.106 of the Commission's Rules on which SUNY relies states that: "Petitions requesting reconsideration of a final Commission action will be acted on by the Commission." See Section 1.106(a)(1). Yet SUNY specifically directed its request for action to the Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau. Section 0.283 of the Commission's Rules (the delegations of authority to the Mass Media Bureau) contemplates that new arguments not previously considered by the Commission must be referred to the Commission. See Section 0.283(b)(2). Furthermore, SUNY fails to cite authority for its unusual request to have the Bureau reconsider action taken by the Commission. The cited case of Warren Price Communications Inc. 7 FCC Rcd 4344 (1992), involved a petition reconsideration decided by the Commission, not the Bureau. Thus, SUNY's Petition is procedurally defective.

3. SUNY is aware of a previously filed Petition for Rule Making by Sacred Heart University, Inc. on December 1, 1995 which proposes inter alia, (1) the allotment of Channel 273A to Sharon, Connecticut as a substitute for Channel 277A and modification of the license for Station WQQQ and (2) to allot Channel 255A instead of Channel 273A to accommodate the applications at Rosendale, including that of SUNY, for a new FM station. SUNY was well aware of this petition and its relationship to SUNY's new attempt to have its license modified because SUNY filed opposing comments to SHU's petition on December 13, 1995. Yet SUNY chose to ignore the conflict between its new proposal and SHU's pending petition in its latest

petition for reconsideration. The Commission issued a Notice of Proposed Rule Making in response to SHU's petition (MM Docket No. 97-178) on August 15, 1997 (DA 97-1697).

4. It is SHU's position that should the Commission find that SUNY has a viable proposal to reserve either Channel 273A or Channel 255A for noncommercial educational use so that SUNY's license can be modified, the Commission must consider the merits of that proposal in MM Docket No. 97-178 as a counterproposal. As stated, SHU filed its petition on December 1, 1995 well before SUNY resorted to accepting a modification of its license to a reserved channel at Rosendale. SUNY's new proposal may be timely as a counterproposal in MM Docket No. 97-178 even though it is not timely for consideration in the instant proceeding. Thus, even though the Bureau can not under its delegated authority reconsider an action by the Commission, SUNY can still have its proposal considered in a separate proceeding under the Commission's comparative allotment standards.

5. Should the Commission decide to issue a Public Notice announcing acceptance of SUNY's proposal as a counterproposal in MM Docket No. 97-178, SHU will address the comparative merits of the two proposals along with any other conflicting proposals that may be filed and found acceptable at that time.

CONCLUSION

6. Having had many opportunities in this proceeding to clearly state that SUNY would accept a modification of its license to a reserved channel and having exhausted its administrative remedies on a modification to an unreserved channel, SUNY can not now offer a new proposal and ignore SHU's prior filed and pending rule making proposal which is in conflict. SUNY was well aware of SHU's proposal but chose to ignore it in the hope that the Commission will resolve MM Docket No. 93-17 favorably to SUNY without "complicating"

matters with SHU's petition. However, basic fairness and the orderly conduct of administrative business will not permit the Commission to ignore the public interest benefits of SHU's proposal versus SUNY's proposal. The Commission must dismiss SUNY's petition for reconsideration as procedurally defective and consider it, if at all, in the context of MM Docket No. 97-178.

Respectfully submitted,

SACRED HEART UNIVERSITY, INC.



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Its Counsel

September 15, 1997

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EXHIBIT 1

Estimated Annual Burden: 448 annual hours; 166 hours per respondent; 2,700 respondents.

Description: Aviation Ground and Marine Coast Radio Station licensees are required to apply for renewal of their radio station authorization every five years. This form will be used for that purpose. The form is being revised to add spaces to collect the applicant's Internet or e-mail address and Taxpayer Identification Number (TIN) to comply with the Debt Collection Improvement Act of 1996. The Wireless Telecommunications Bureau has developed a generic renewal application for electronic filing, FCC Form 900. Once implemented, applicants for renewal of Aviation Ground and Marine Coast licenses will have the option to use FCC Form 452-R or electronically file for renewal using the FCC Form 900. The FCC staff will use the data to determine eligibility for a renewed radio station authorization, and to issue a radio station license. Data is also used by Compliance personnel in conjunction with field engineers for enforcement and interference resolution purposes.

OMB Control No.: 3060-0368.

Expiration Date: 8/31/2000.

Title: Question Pools Section 97.523.

Form: N/A.

Estimated Annual Burden: 480 total annual hours; average 3 hours per respondent; 160 responses.

Description: The recordkeeping requirement contained in Section 97.523 is necessary to permit question pools used in preparing amateur examinations to be maintained by Volunteer Examiner Coordinators (VEC's). These question pools must be published and made available to the public before the questions are used in an examination. The information maintained by the VEC's is used to prepare amateur examinations. If this information was not maintained the amateur examination program would deteriorate and become outdated. These examinations would not adequately measure the qualifications of the applicants.

OMB Control No.: 3060-0068.

Expiration Date: 8/31/2000.

Title: Application for Consent to Assignment of Radio Station Construction Authorization or License for Stations in Services Other Than Broadcast.

Form: FCC 702.

Estimated Annual Burden: 13,220 total annual hours; average 5 hours per respondent; 2,644 responses.

Description: The FCC Form 702 is used to request Commission approval of

assignment of radio station construction authorization or license. The form was revised to increase the number of respondents and total annual burden hours as a result of the Third Report and Order, Redesignation of 27.5 GHz Frequency Band, Establishing Rules and Policies for Local Multipoint Distribution Service (LMDS). The Commission concluded that any LMDS licensee will be permitted to partition or disaggregate portions of its radio station authorization. The fifth notice of Proposed Rulemaking proposes that this form will be used to complete the disaggregation and partitioning of LMDS. This form may also be used in the future disaggregation and partitioning for a variety of spectrum-based services licensed by the Commission. Specific rules will be adopted in Reports and Orders or by public notice for each service subject to disaggregation and partitioning.

The form has been revised to include a space for the applicant to provide an Internet or e-mail address is being added to the form as an alternative media for contacting the applicant with questions relating to the application. We are also requesting permission to collect the Taxpayer Identification Number (TIN) to comply with the Debt Collection Improvement Act of 1996. The drug certification question has been eliminated and text added to the certification block prior to signature in lieu of check a "yes/no" block. The application has been revised to include reference to Part 101 applicants. The data will be used by Commission staff to determine the financial, legal and technical qualifications of the applicant.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97-23038 Filed 8-28-97; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2221]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

August 27, 1997.

Petitions for reconsideration have been filed in the Commission's rulemaking proceeding listed in this public notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's

copy contractor, ITS, Inc. (202) 857-3800. Oppositions to this petition must be filed September 15, 1997. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Canovanas, Culebra, Las Piedras, Mayaguez, Quebradillas, San Juan, and Vieques, Puerto Rico, and Christiansted and Frederiksted, Virgin Islands) (MM Docket No. 91-259, RMs-7309, 7942, 7943, 7944 and 7948).

Number of Petitions Filed: 1.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Rosendale, New York) (MM Docket No. 93-17, RM-8170).

Number of Petitions Filed: 1.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Mt. Juliet and Belle Meade, Tennessee) (MM Docket No. 97-97, RM-9047).

Number of Petitions Filed: 1.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97-23037 Filed 8-28-97; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting; Announcing an Open Meeting of the Board

TIME AND DATE: 10:00 a.m. Wednesday, September 10, 1997.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

STATUS: The entire meeting will be open to the public.

MATTER TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:

- Discussion of Legislation.
- Proposed Rule Amending Definition of "State" in Membership Regulation to Include American Samoa and the Northern Mariana Islands.
- Amendment to the Qualified Thrift Lender Regulation.
- Proposed Rule—Eligibility for Membership and Advances.
- Affordable Housing Program Application Approvals.
- Discussion of 1998-2002 GPRA Strategic Plan.

CERTIFICATE OF SERVICE

I, Lisa M. Balzer, a secretary in the law firm of Ginsburg, Feldman and Bress, Chartered, do hereby certify that I have, on this 15th day of September, 1997, sent by first-class U.S. Mail, postage prepaid, copies of the foregoing "OPPOSITION TO PETITION FOR RECONSIDERATION" to the following:

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|---|--|--|---|
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* HAND DELIVERED